

FGM: ALLOW TERMINATION OF PARENTAL RIGHTS

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House Bill 4716 (reported from committee as H-1)
Sponsor: Rep. Peter J. Lucido
Committee: Law and Justice
Complete to 7-5-17

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill would add, as a circumstance that constitutes grounds for termination of a parent's parental rights to a child, that the parent is convicted under a state or federal law of knowingly performing female genital mutilation (FGM) on a child or knowingly transporting a child, or facilitating the transport of a child, for that purpose.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governmental units. See *Fiscal Information* below for a more detailed discussion.

THE APPARENT PROBLEM:

According to advocates and adult survivors of female genital mutilation (FGM), the procedure is painful and can cause physical and emotional complications that can span a lifetime. There is no medical or beneficial rationale for the procedure. Founded in centuries of cultural and/or religious beliefs, the practice continues though most countries and religions have banned or discouraged it. Yet, as evidenced by the current ongoing federal investigation and prosecution of two Michigan doctors and the wife of one of the doctors, it is still happening in the world and in the state.

Under a comprehensive package of bills addressing female genital mutilation, it will be a felony for a person to perform FGM on a child or to transport a child, or facilitate the transport of a child, for the purpose of having FGM performed. The penalties will apply to acts conducted within Michigan. Some feel that a parent's decision to allow FGM to be performed on a minor child is akin to child abuse and therefore should be grounds to terminate a parent's parental rights to his or her children if the case warrants such action.

THE CONTENT OF THE BILL:

The Juvenile Code provides that the family division of circuit court (family court) may terminate the parental rights to a child who remains in foster care or in the custody of a guardian or limited guardian if the court finds by clear and convincing evidence that certain circumstances exist. One of those circumstances is that the parent is convicted of certain crimes (e.g., murder in the first or second degree or a criminal sexual conduct crime) under Michigan law or a substantially similar federal law or law of another state if the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child.

House Bill 4716 would amend the Juvenile Code (at MCL 712A.19b) to add a conviction of Section 136 or Section 136a of the Michigan Penal Code, or another state or federal law that is substantially similar, to that circumstance.

The bill is tie-barred to House Bill 4636 and 4637, meaning that it cannot take effect unless both of the other two bills are also enacted into law. Both of those bills have been enrolled and have been presented to the governor.

(House Bill 4636 and Senate Bill 337 would each add Section 136 to the Michigan Penal Code to prohibit a person from knowingly performing a surgical operation to circumcise, incise, excise, or infibulate all or part of the labia majora, labia minora, clitoris, or contiguously surrounding tissue on a child, regardless of whether the surgical operation caused physical deformity, residual pain, or loss or sensation. House Bill 4637 and Senate Bill 368 would each add Section 136a to prohibit a person from knowingly transporting a child for the purpose of conduct with regard to that child that would be a violation of Section 136 if it occurred within the state, and also facilitating conduct that would be a violation.)

BACKGROUND INFORMATION:

The bill is part of a bi-cameral package of legislation addressing various aspects of female genital mutilation. The other bills, which have been enrolled, are House Bills 4636-4639, 4641-4642, 4661, and 4690 and Senate Bills 337-338, 368-369, and 410. House Bill 4640, which pertains to providing FGM training to law enforcement officers, is pending committee action.

According to the World Health Organization (WHO), female genital mutilation (FGM, also called cutting) is any procedure involving the partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. WHO classifies FGM into four categories, as follows:

- Type 1– clitoridectomy: partial or total removal of the clitoris, and in very rare cases, only the prepuce.
- Type 2– excision: partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora.
- Type 3– infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner or outer labia, with or without removal of the clitoris.
- Type 4– other: all other harmful procedures to the female genitalia for non-medical purposes; for example, pricking, piercing, incising, scraping, and cauterizing the genital area.

The AHA Foundation has found that the procedure is often performed on girls between the ages of 4–14 and for a variety of cultural, social, and religious reasons. As reported by WHO, some factors may include strong cultural traditions or social conventions that pertain to ideals of femininity through removal of body parts considered "unclean" or "male," and to prove virginity at the time of marriage. In such social circles, it is considered a necessary

procedure in order for a woman to be "desirable" by a potential spouse. The Center for Disease Control and Prevention reported that the three countries with the highest prevalence of FGM are Somalia, Ethiopia, and Sudan.

WHO has found no health benefits for girls and women, as the procedure involves the removal and/or damage of normal and healthy female genital tissue. In effect, FGM negatively interferes with the natural functions of girls' and women's bodies. Immediate consequences include severe pain, shock hemorrhage (bleeding), tetanus or sepsis (bacterial infection), urine retention, open sores in the genital region, and injury to nearby genital tissue. Long-term consequences often consist of recurrent bladder and urinary tract infections, cysts, infertility, complications during sexual intercourse and childbirth, and an increase in newborn deaths and stillbirths. Other psychological consequences occur as well, such as loss of trust, betrayal, post-traumatic shock, depression, anxiety, guilt, and suicidal ideation. For women who have resisted the procedure, they often become outcasts of their society and are shamed for their "uncleanliness." These women are also at a higher risk for "honor" violence or abuse because the family's honor can lie with girls undergoing FGM.

Current federal regulations criminalize FGM under Chapter 18, Section 116, of the United States Code, which prohibits a person from knowingly performing FGM on girls less than 18 years of age, or from taking a girl abroad for FGM (also known as "vacation cutting"). A person found guilty under this law would receive a maximum of five years' imprisonment and/or an unspecified fine amount. Chapter 8, Section 1374, of the United States Code also requires United States immigration officials to provide all immigrants with information about the severe physical and mental harm FGM causes and the legal consequences of performing FGM.

FISCAL INFORMATION:

House Bill 4716 would have an indeterminate fiscal impact on the state and on local court funding units. The impact would depend on costs incurred for an increased caseload in the courts and increased administrative costs. The provision added by the bill would be just one of many factors a court would have to consider when using its discretion to make a determination on the termination of parental rights. The fiscal impact would depend on the outcome of these cases.

To the extent that the bill's provisions might increase the number of youth that enter the foster care system, the bill could increase costs to the Department of Health and Human Services and to counties for increased caseload costs for foster care services. The amount of any increased costs would depend upon how many additional cases might be added and the determinations made by the courts in those cases.

ARGUMENTS:

For:

Under the bill, if a parent were convicted under Michigan law, or a similar federal law or law of another state, of performing FGM on a child, whether their own child or another person's child, a court could terminate the parent's parental rights to all of the parent's

children (not just the child on whom FGM was performed). Similarly, a parent who transported his or her own child, or someone else's child (or facilitated the transport), for the purpose of having FGM performed could have the parental rights to any of his or her own children terminated; this would include transporting the child within Michigan or from Michigan to another state or country. Federal law also applies to transporting a child from the U.S. to another country for the purpose of FGM. House Bill 4716 would not apply in situations in which a parent performed FGM on a child, or aided in the transport of any child for the purpose of FGM, in another country before taking up residence in the United States (this is because there would be no conviction under Michigan, federal, or another state's law regarding FGM).

Termination of parental rights would not be automatic. If a parent were convicted of violating the new Michigan law banning FGM (created by House Bills 4636-4637 and Senate Bills 337 and 368), or a federal or other state's law that is substantially similar to Michigan's law, a court would still have to find—*by clear and convincing evidence*—that termination is in the child's best interests because continuing the parent-child relationship would be harmful to the child. A clear and convincing standard of proof is the highest level of proof in civil matters, though lower than the standard of proof used in criminal cases.

FGM is very traumatizing to a child, but the trauma doesn't end when the initial wound heals. Knowledgeable observers say the procedures used can subject a woman to a litany of pain and infections across her lifespan. Among other things, FGM can make childbirth difficult and even hazardous for both mother and baby. Though many maintain it is a part of a religious practice, none of the major religions require or encourage FGM. Any parent who would subject his or her own daughter or someone else's little girl to FGM despite the current understanding of the detriment to the health of females, discouragement from many cultural and religious leaders, and state and federal law criminalizing the practice should be scrutinized to see if a continued relationship with their own children would increase the risk the children could or would suffer physical or emotional harm.

Simply put, the bill will allow a court, in those cases in which one or both parents has or have been convicted of a crime related to FGM, to determine if the child involved or other children in the home are in danger of being harmed if allowed to remain in a relationship with the parent who was convicted. If the court is satisfied that there is clear and convincing evidence the child or children will be harmed by a continued relationship with the parent, the rights of the convicted parent could be terminated.

Against:

House Bill 4716 would apply to a U.S. citizen or legal immigrant who was convicted not just under the new Michigan law, but also any similar state's law or federal law. Thus, a person who had been convicted under another state's FGM law or the federal law, whether the person was a Michigan resident at the time of the conviction or moved to the state at a later time, could have a Michigan court decide to terminate parental rights to any of his or her children. In addition, the bill can be applied to terminating the rights of a parent to a child born years after a conviction under a state or federal FGM statute. That child could be subject to removal based on the previous conviction. Though a judge is to consider whether or not the child risks harm if a relationship with the parent is continued, a petition

filed for termination under the section of law to which a conviction of FGM is being added almost always ends in termination of the parent's parental rights.

Further, some feel that because FGM often involves the children of immigrants, that people should be aware that any criminal conviction can be grounds for deportation. Others have expressed concerns that strict FGM penalties can drive the practice further underground, or be an incentive for parents to have the procedure performed when the children are infants or toddlers, to escape detection. It should be remembered that these parents believe FGM is in the child's best interest and therefore is an expression of love. To counter such a belief, resources should be focused on increased education about the reality of FGM, not on criminal penalties which are likely to have little deterrent value or creating more laws when existing statutes that punish child abuse can suffice.

Response:

It is true that a conviction under any state or federal FGM law could result in a court considering whether to terminate a Michigan's parent's parental rights to a child born either before or after the conviction; however, as stated earlier, termination is not automatic and requires proof at the clear and convincing level that a child would be harmed if the parent-child relationship continued. Whether or not the child was alive at the time of the conviction or born years later, factors such as demonstrated remorse and rehabilitation on the part of the parent, among other things considered by the court, could be an important indicator that termination of the relationship was not in the child's best interest. Further, the bill is needed because it links specific intent to mutilate a child's genitals with conduct that constitutes grounds for losing one's parental rights with a child, something that existing laws may not necessarily cover.

POSITIONS:

No positions on the bill were offered.

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